

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

ADMINISTRATION SYSTEMS RESEARCH
CORPORATION INTERNATIONAL,

Plaintiff,

vs.

Case No. 16-00804-CBB

HON. CHRISTOPHER P. YATES

DAVITA HEALTHCARE PARTNERS INC.;
DVA RENAL HEALTHCARE, INC.;
PHYSICIANS DIALYSIS ACQUISITIONS,
INC.; TOTAL RENAL CARE, INC.; BLANCO
DIALYSIS, LLC.; IONIA DIALYSIS, LLC;
and PORTOLA DIALYSIS, LLC,

Defendants.

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OPINION AND ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AND COMPEL ARBITRATION

This dispute between the plaintiff, third-party claims administrator Administration Systems Research Corporation International (“ASR”), and the defendants, who are kidney-dialysis providers, presents thorny questions that must be decided by somebody. On November 2, 2015, the defendants initiated an arbitration proceeding before the American Health Lawyers Association (“AHLA”) for the purpose of resolving the parties’ issues concerning payments for dialysis services. But after that, ASR filed the instant case seeking a declaration that the parties’ dispute must be resolved by a court, rather than in arbitration. The defendants subsequently moved for summary disposition pursuant to MCR 2.116(C)(7) requesting dismissal in deference to the pending arbitration proceeding. Because the Court concludes ASR agreed to arbitrate its disputes with the defendants, the Court must award summary disposition to the defendants and dismiss this case.

I. Factual Background

The defendants have moved for summary disposition under MCR 2.116(C)(7) on the theory that their dispute with Plaintiff ASR must be resolved by arbitration. “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence[,]” and if “such material is submitted, it must be considered.” Maiden v Rozwood, 461 Mich 109, 119 (1999). Nevertheless, “[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” Id. Accordingly, the Court shall limn the facts by starting with ASR’s first amended complaint and then adjusting those allegations as required by the evidence submitted in connection with the motion for summary disposition.

In simple terms, the defendants “own, operate or manage dialysis facilities in outpatient and hospital clinics in and around Grand Rapids,” see First Amended Complaint, ¶ 10, and they receive payments for services by submitting claims to Plaintiff ASR, which in turn processes the claims and reimburses the defendants pursuant to contractual agreements between the parties. See id., Exhibit C (Demand for Arbitration, ¶¶ 13-14). The defendants allege that ASR has underpaid them to the tune of \$6 million. See id. (Demand for Arbitration, ¶ 15). Thus, the defendants presented a demand for arbitration to the AHLA in late 2015. Id. (Demand for Arbitration). In doing so, the defendants contend that they were simply invoking the dispute-resolution process spelled out in their “provider agreements” with ASR. See id., Exhibits A & B (provider agreements).

Despite language in section 8.14 of each provider agreement prescribing “binding arbitration” as the method for resolving disputes between the parties, see First Amended Complaint, Exhibits A & B, Plaintiff ASR did not initially participate in the arbitration proceeding. As a result, the process of selecting an arbitrator took place without ASR’s input. See First Amended Complaint, ¶ 82. That

development hardened ASR's opposition to the arbitration proceeding. On January 27, 2016, ASR filed this action in an attempt to forestall resolution of the parties' dispute through arbitration. After ASR submitted a first amended complaint on March 25, 2016, the defendants filed a motion seeking dismissal of ASR's complaint in favor of arbitration. Consequently, the Court must decide whether the parties' dispute should be resolved through arbitration or judicial proceedings.

II. Legal Analysis

The defendants have correctly presented their request for arbitration instead of litigation as a motion for summary disposition under MCR 2.116(C)(7). See DeCaminada v Coopers & Lybrand, LLP, 232 Mich App 492, 495-496 & n1 (1998). "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." See RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). "If a factual dispute exists, however, summary disposition is not appropriate." Id.

In Michigan, our legislature "has expressed a strong public policy favoring private voluntary arbitration, and our courts have historically enforced agreements to arbitrate disputes." Rembert v Ryan's Family Steak Houses, Inc, 235 Mich App 118, 127-128 (1999). Our legislature "significantly advanced the public policy favoring arbitration in 1961 when it enacted the Michigan arbitration act, (MAA), MCL 600.5001 *et seq.*" id. at 131, and recently reaffirmed that commitment to arbitration in 2013 when it adopted the Uniform Arbitration Act, MCL 691.1681, *et seq.* Additionally, a steady stream of decisions from our Court of Appeals reflects our jurisprudential commitment to arbitration. See, e.g., Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 156 (2007). To be sure, "[a]rbitration is a matter of contract," Altobelli v Hartmann, 499 Mich 284, 295 (2016), so

the preference for arbitration “‘is triggered only if the parties agree to arbitrate.’” Macomb County v AFSCME Council 25 Locals 411 and 893, 494 Mich 65, 81 n47 (2013). There nonetheless exists “a presumption of arbitrability ‘unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.’” Amtower v William C Roney & Co, 232 Mich App 226, 235 (1998). Indeed, “[a]ny doubts about arbitrability of an issue should be resolved in favor of arbitration.” See City of Huntington Woods v Ajax Paving Indus, Inc, 196 Mich App 71, 75 (1992).

At the national level, “[t]o overcome judicial resistance to arbitration, Congress enacted the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16.” Buckeye Check Cashing, Inc v Cardegna, 546 US 440, 443 (2006). Indeed, section 2 of the FAA “embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts[.]” Id. Moreover, as the United States Supreme Court has noted, the FAA “‘creates a body of federal substantive law’” that is “‘applicable in state and federal courts’” alike. Southland Corp v Keating, 465 Mich 1, 12 (1984). Thus, the FAA renders enforceable all “‘agreements for arbitration contained in contracts involving interstate commerce,’”¹ see id. at 12-13, so the Court must respect the FAA’s “broad reach,” which is “unencumbered by state-law constraints.” See id.

Against this backdrop, the Court must decide whether Plaintiff ASR may prevent arbitration of the defendants’ state-law claims for breach of contract, innocent and negligent misrepresentation, and declaratory relief, as presented in the defendants’ “Demand for Arbitration.” See First Amended Complaint, Exhibit C. ASR insists that the defendants’ various claims are not subject to arbitration, that several defendants cannot rely upon the arbitration language in the provider agreements because

¹ Neither side can dispute that their provider agreements involve interstate commerce.

they are not parties to those contracts, and that the arbitration proceeding is fatally flawed in several respects. The Court shall address these three broad categories of concerns *seriatim*.

A. The Defendants' Claims Are Subject to Arbitration.

Plaintiff ASR contends that the claims presented in the defendants' "Demand for Arbitration" are not proper subjects for arbitration. This argument requires consideration of the language in the provider agreements prescribing the chosen dispute-resolution mechanism. Under section 8.14 of each provider agreement, the parties bound themselves to engage in the following process in order to resolve their disagreements:

Dispute Resolution The parties shall make reasonable attempts to resolve any and all disputes arising hereunder through informal discussions. In the event a dispute which the parties cannot resolve involves a provision or circumstance covered by ERISA, the parties agree that the dispute resolution procedures and remedies available under ERISA will be their sole recourse. If the dispute is one for which ERISA does not provide a dispute resolution procedure and remedy, or the dispute falls outside of ERISA, then the parties agree their sole recourse shall be to submit the matter to binding arbitration conducted in Grand Rapids, Michigan, according to the Rules and Procedures of the Dispute Resolution Service of the NHLA, using a single arbitrator. Arbitration fees shall be borne equally by the parties.

See First Amended Complaint, Exhibits A & B (provider agreements, § 8.14). Thus, by their terms, the provider agreements dictate that the parties must arbitrate all of their disagreements except those that involve "a provision or circumstance covered by ERISA[.]" See id.

Each claim advanced by the defendants in their "Demand for Arbitration" does not involve a provision or circumstance covered by the Employee Retirement Income Security Act ("ERISA"), 29 USC 1001, *et seq.* Each claim merely rests upon a garden-variety state-law theory. Moreover, the defendants' "Demand for Arbitration" disclaims any reliance upon ERISA. See First Amended Complaint, Exhibit C (Demand for Arbitration, ¶ 39). Nevertheless, Plaintiff ASR contends that all of the defendants' claims in the "Demand for Arbitration" are preempted by ERISA. To be sure, the

United States Supreme Court has consistently ruled that “common law causes of action” that “‘relate to’ an employee benefit plan . . . fall under ERISA’s express pre-emption clause” set forth in 29 USC 514(a). Pilot Life Ins Co v Dedeaux, 481 US 41, 47 (1987). In addition, ERISA includes a provision at 29 USC 502(a)(1)(B) that not only authorizes “a suit by a beneficiary to recover benefits from a covered plan,” Metropolitan Life Ins Co v Taylor, 481 US 58, 62-63 (1987), but also “provides an exclusive federal cause of action for resolution of such disputes.” Id. at 63. Accordingly, complete preemption under ERISA can, in appropriate circumstances, convert well-pleaded state-law claims into federal ERISA claims despite the intention of the party asserting the claims to avoid invoking ERISA. See Aetna Health Inc v Davila, 542 US 200, 207-208 (2004).

But the decisions cited by Plaintiff ASR in support of its ERISA-preemption theory all share one common element: they were all filed by ERISA plan participants or beneficiaries in an attempt to obtain benefits under the ERISA plans. Accordingly, each of those claims manifestly related to an employee-benefit plan, as contemplated by the ERISA preemption provision in 29 USC 514(a). Here, in contrast, the defendants – providers of dialysis services – have asserted common-law claims against a third-party administrator that arise from their provider agreements, as opposed to ERISA plans. Indeed, ASR has expressly disclaimed “any assurance or guarantee of payment by the ERISA Plans[.]” choosing instead to modestly describe its obligation as “[a]rranging for payment’ by the ERISA Plans[.]” See Plaintiff ASR’s Response to Defendants’ Motion to Dismiss at 24. Therefore, by its own admission, ASR is embroiled in a dispute with the defendants over its obligations – both contractual and otherwise.² This bilateral battle depends upon the language of the parties’ provider

² Plaintiff ASR asserts that all of the fraud claims fall prey to the economic-loss doctrine, but the arbitrator must consider that argument in the first instance. See Nitro-Lift Technologies, LLC v Howard, 133 S Ct 500, 501 (2012); Altobelli, 499 Mich at 296. Thus, although ASR’s reliance upon Rinaldo’s Construction Corp v Michigan Bell Telephone Co, 454 Mich 65 (1997), may well be persuasive on that point, the arbitrator must have the first opportunity to consider that issue.

agreements and common-law fraud principles, rather than any ERISA plan. As a result, ASR cannot convince the Court that the defendants' claims under state law relate to an employee-benefit plan in a manner that triggers ERISA preemption of those claims.³

B. Each Defendant Is Entitled to Demand Arbitration.

Plaintiff ASR contends that several of the defendants that filed the "Demand for Arbitration" lack standing to pursue arbitration because they cannot rely upon either of the "provider agreements" signed by ASR. To be clear, seven separate corporate entities jointly filed the arbitration demand. ASR concedes that Defendant DVA Renal Healthcare, Inc. ("DVA") has the right to rely upon the arbitration clause in the so-called GAMBRO provider agreement and Defendant Physicians Dialysis Acquisitions, Inc. ("PDA") has the right to depend upon the arbitration clause in the so-called PDM provider agreement.⁴ But ASR insists that the other five corporate entities that filed the demand for arbitration cannot assert rights under either provider agreement because they are not signatories. See

³ Plaintiff ASR has spent a substantial amount of time and effort discussing the implications of the assignment of claims to the defendants, but the Court regards that discussion as a red herring in light of the defendants' presentation of the claims in the "Demand for Arbitration." No defendant has asserted standing to seek relief based upon the assignment of any claim by a plan participant or beneficiary. Thus, each defendant "is neither a participant [in] nor a beneficiary" of an ERISA plan, so each defendant "does not have standing under ERISA to sue in its own right." Pascack Valley Hospital, Inc v Local 464A UFCW Welfare Reimbursement Plan, 388 F3d 393, 400 (3d Cir 2004). As a result, the defendants' claims asserted in their "Demand for Arbitration" cannot be preempted by ERISA. See id. at 401. Beyond that, as noted by the United States Court of Appeals for the Ninth Circuit in a case similar to the instant dispute, "'the Providers' claims, which arise from the terms of their provider agreements and could not be asserted by their patient-assignors, are not claims for benefits under the terms of ERISA plans, and hence do not fall within [29 USC] 502(a)(1)(B).'" Id. at 403, quoting Blue Cross of California v Anesthesia Care Associates Medical Group, Inc, 187 F3d 1045, 1050 (9th Cir 1999). Accordingly, ERISA preemption does not convert the defendants' state-law claims into ERISA claims, so the parties' dispute does not involve "a provision or circumstance covered by ERISA," as contemplated by the dispute-resolution clause in section 8.14 of the provider agreements. See First Amended Complaint, Exhibits A & B (provider agreements, § 8.14).

⁴ The so-called GAMBRO provider agreement is attached to the first amended complaint as Exhibit A, and the so-called PDM provider agreement is attached to that pleading as Exhibit B.

AFSCME Council 25 v Wayne County, 292 Mich App 68, 80 (2011). As our Court of Appeals has ruled: “Arbitration, which is a matter of contract, cannot be imposed on a party that was not legally or factually a party to the agreement wherein an arbitration provision is contained.” Id. Similarly, then, an arbitration clause in a contract ordinarily cannot be invoked by “a party that was not legally or factually a party to the agreement wherein an arbitration provision is contained.”⁵ See id. Thus, the Court must decide whether the five defendants at issue can invoke the arbitration clause in either of the provider agreements.

In debating whether the defendants at issue can invoke the arbitration clause in the provider agreements, Plaintiff ASR has asked the Court to take a strict approach, whereas the defendants have urged the Court to employ a practical approach. For several reasons, the Court finds that a practical approach is appropriate. First, commercial and contractual relationships exist among the defendants. Second, the preamble of the GAMBRO provider agreement makes clear that the provider agreement is between ASR and “GAMBRO Healthcare, Inc. and its related affiliates and subsidiaries[.]” See First Amended Complaint, Exhibit A (GAMBRO provider agreement). Third, our Supreme Court recently applied agency principles to determine that the arbitration clause in a law firm’s operating agreement applied to individual members of the firm as well, thereby rejecting the plaintiff’s effort to avoid arbitration by naming as defendants those non-signatories to the operating agreement. See Altobelli, 499 Mich at 296-299. In reaching that result, our Supreme Court stated that the “burden

⁵ That principle, however, is not categorical. The United States Supreme Court has not only rejected the notion “that those who are not parties to a written arbitration agreement are categorically ineligible for relief” under the FAA’s provisions, see Arthur Andersen LLP v Carlisle, 556 US 624, 629 (2009), but also stated that “‘traditional principles’ of state law allow a contract to be enforced by or against nonparties to the contract through ‘assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel[.]’” Id. at 631. As a result, state law defines the ability of the five defendants at issue here, who are all non-signatories, to rely upon a provider agreement in demanding arbitration of their disputes with Plaintiff ASR. Id. at 630-631.

is on the party seeking to avoid the agreement, not the party seeking to enforce the agreement.” See id. at 295. Consequently, for all of those reasons, the Court must place the burden on ASR to make a persuasive showing that the five defendants at issue have no right to invoke the arbitration clause in the provider agreements. Absent a compelling presentation by ASR, the Court must defer to the arbitration process.

All five defendants at issue assert a right to arbitration based on their relationships with the signatories to the provider agreements, Defendants DVA and PDA. Specifically, Defendant DaVita Health Care Partners, Inc. (“DaVita”) is a Fortune 500 company that sits atop a sprawling corporate structure of subsidiaries and affiliates organized by operating divisions. See Declaration of Joseph Brunink in Support of Defendants’ Motion to Dismiss and Compel Arbitration, ¶ 4. Its Kidney Care division provides outpatient dialysis. Id. “Through a series of Management Services Agreements, DaVita provides management and administrative services to its operating affiliates and subsidiaries who own the actual dialysis facilities themselves.” Id. DaVita’s affiliates and subsidiaries include not only the two signatories to the provider agreements, *i.e.*, DVA and PDA, but also the four other defendants, Total Renal Care, Inc. (“TRC”), Blanco Dialysis, LLC (“Blanco”), Ionia Dialysis, LLC (“Ionia”), and Portola Dialysis, LLC (“Portola”). In other words, DaVita is the parent company of each of the other six defendants, which provide dialysis to patients in West Michigan. See id., ¶ 9. The Court must decide whether those corporate relationships are sufficient to enable each defendant to invoke the dispute-resolution clause in the provider agreements.

The so-called GAMBRO provider agreement makes clear in the preamble that that agreement is between Plaintiff ASR “and GAMBRO Healthcare, Inc. and its related affiliates and subsidiaries.” See First Amended Complaint, Exhibit A. Thus, by its terms, the GAMBRO provider agreement extends the reach of that contract well beyond the “provider” itself, *i.e.*, GAMBRO Healthcare, Inc.,

to include “its related affiliates and subsidiaries.”⁶ ASR insists that not all affiliates and subsidiaries of the “Provider” fall within the GAMBRO provider agreement because the preamble identifies the contracting party precisely as “GAMBRO Healthcare, Inc. and its related affiliates and subsidiaries (“Provider”), with business offices located at 1919 Charlotte Avenue, Nashville, TN, 37203 and their facilities as listed in Exhibit B” to the GAMBRO provider agreement. Although no defendant in the instant case is listed in Exhibit B to the GAMBRO provider agreement, ASR’s argument founders upon the conjunctive, rather than disjunctive, phrasing of the contracting parties as GAMBRO *and* “its related affiliates and subsidiaries” *and* “their facilities as listed in Exhibit B.” Consequently, the Court must reject ASR’s crabbed definition of the entities that come within the GAMBRO provider agreement as only those companies listed in Exhibit B to the provider agreement. Instead, the Court shall consider whether the five defendants at issue are “affiliates” or “subsidiaries” of the “provider” identified in the GAMBRO provider agreement.

Both sides acknowledge that, in 2005, GAMBRO adopted the new name of Defendant DVA, so the Court must decide whether the five defendants at issue are “affiliates” or “subsidiaries” of that entity. The record leaves no doubt that Defendant DaVita is DVA’s parent, and all of the other four defendants at issue are siblings of DVA because those four companies all provide dialysis services in West Michigan in the same manner as DVA under the oversight of parent DaVita. Our Court of Appeals has explained, albeit in an unpublished decision, that an “affiliate” is ““a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or

⁶ The so-called GAMBRO provider agreement also indicates that the reference to GAMBRO itself as the “Provider shall include the entity identified above as the contracting party, and all of the individuals and facilities under contract with or controlled by the entity who participate in or are used in the provision of services or goods normally furnished by the entity to its patients, clients or customers.” See First Amended Complaint, Exhibit A (GAMBRO provider agreement, § 1.10). As far as the Court can tell, that separate expansion of the concept of the “provider” has no bearing upon the right of the five defendants at issue to rely upon the GAMBRO provider agreement.

sibling corporation.”” Mercantile Bank of Michigan v CLMIA, LLC, No 316777, slip op at 16 (Mich App Feb 12, 2015) (unpublished decision), quoting BLACK’S LAW DICTIONARY (7th ed). According to that definition, each of the five defendants at issue constitutes an “affiliate” of DVA. Moreover, decisions from our Court of Appeals establish that subjecting affiliates to dispute-resolution clauses in commercial contracts is commonplace. See, e.g., Coastal Communications of Michigan, LLC v AT&T Services, Inc, No 324241, slip op at 4-5 (Mich App March 29, 2016) (unpublished decision). Thus, the Court concludes that Plaintiff ASR has failed to carry its burden of demonstrating that the five defendants at issue have no right to rely upon the dispute-resolution language in the GAMBRO provider agreement. See Altobelli, 499 Mich at 295.

C. The Court Cannot Dictate Procedures in the Arbitration.

Plaintiff ASR has adopted a blunderbuss approach in challenging the procedures undertaken thus far in the arbitration proceeding. That is, ASR has contested the arbitral forum, the procedure for selecting the arbitrator, and the manner in which the defendants served ASR with notice of the arbitration proceeding. But precedent restricts the Court’s ability to pass upon issues raised by ASR. As Judge (and now Chief Justice) Robert Young has observed, “[o]nce it is determined . . . that the parties are obligated to submit the subject matter of the dispute to arbitration, procedural questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.”” See Amtower, 232 Mich App at 232, quoting John Wiley & Sons, Inc v Livingston, 376 US 543, 557-558 (1964). Therefore, although arbitration must take place in the manner prescribed by the parties’ provider agreements, see Volt Information Sciences, Inc v Board of Trustees of Leland Stanford Junior University, 489 US 468, 479 (1989), the Court must tread carefully in dealing with ASR’s procedural challenges to the arbitration.

As a threshold matter, Plaintiff ASR contends that the defendants failed to provide notice of the arbitration proceeding to ASR in an appropriate manner. Without question, the effort to provide notice by telephone messages did not comport with due-process standards or Michigan procedures, but both sides now agree that, on December 3, 2015, the defendants furnished formal notice to ASR in a perfectly appropriate manner. See Plaintiff ASR's Response to Defendants' Motion to Dismiss and Compel Arbitration, Exhibit 1 (Affidavit of Todd Stacy). Accordingly, the Court need not get involved in any issue about the adequacy of notice.

Plaintiff ASR implores the Court to wade into an ongoing dispute about the timeliness of the notice of arbitration because the defendants' delay in notifying ASR of the arbitration purportedly led to appointment of an arbitrator without input from ASR. That dispute, however, falls within the authority of the arbitrator to weigh in the first instance. See Amtower, 232 Mich App at 232. If the defendants insist on excluding ASR from the process of selecting an arbitrator and they carry the day on that issue, the defendants will have to justify that outcome if they prevail in arbitration and ASR thereafter contests the arbitrator's award. See MCR 3.602(J)(2). But the Court must stay its hand on that issue in deference to the arbitration proceeding at this early stage of the process.

Plaintiff ASR next insists that the arbitration proceeding cannot be conducted by the AHLA because section 8.14 of the provider agreements prescribes "arbitration conducted in Grand Rapids, Michigan, according to the Rules and Procedures of the Dispute Resolution Service of the NHLA, using a single arbitrator." See First Amended Complaint, Exhibits A & B. This is truly a tempest in a teapot, however, because the record reveals that "[o]n July 1, 1997, the National Health Lawyers Association (NHLA) and the American Academy of Healthcare Attorneys (AAHA) combined into a single organization named the American Health Lawyers Association (AHLA)." See Declaration of Geoff Drucker in Support of Defendants' Motion to Dismiss and Compel Arbitration, ¶ 3. Thus,

the AHLA is the successor to the NHLA. Permitting the AHLA to conduct the arbitration in place of its predecessor, the NHLA, does not contravene the language of the dispute-resolution provision of the parties' provider agreements. Manifestly, the Court ought not block the arbitration proceeding merely because the AHLA, rather than the NHLA, is conducting that proceeding.⁷ As a result, the Court shall grant the defendants' motion for summary disposition under MCR 2.116(C)(7), thereby allowing the parties to resolve their disputes in the pending arbitration proceeding.

III. Conclusion

For all of the reasons set forth in this opinion, the Court must grant summary disposition to the defendants under MCR 2.116(C)(7).⁸ The defendants are entitled to demand arbitration of their disputes with Plaintiff ASR pursuant to the dispute-resolution language in the provider agreements attached to ASR's First Amended Complaint as Exhibits A and B. If ASR has concerns about the

⁷ "An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-selection clause that posits not only the situs of the suit but also the procedure to be used in resolving the dispute." Scherk v Alberto-Culver Co, 417 US 506, 519 (1974). Consequently, issues arise when "the forum selection clause cannot be enforced" because the specified arbitration forum no longer provides arbitration services. E.g., Smith v ComputerTraining.com, Inc, 772 F Supp 2d 850, 860-862 (ED Mich 2011). In the instant case, however, the AHLA is simply the newer version of the NHLA that similarly provides arbitration services.

⁸ In reaching this result, the Court must also deny Plaintiff ASR's motion for partial summary disposition as to Counts Three and Four of the First Amended Complaint. The parties' briefing of that motion essentially tracks their arguments with respect to the defendants' motion to dismiss and compel arbitration, but ASR's motion does include one argument that the parties did not address in detail in briefing the defendants' motion to dismiss. That is, ASR contends that the FAA contains a provision that requires the defendants to obtain an order from a United States District Court that directs the parties to arbitrate their disputes. Specifically, 9 USC 4 states that a "party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." Federal appellate courts have consistently ruled that that provision is permissive, not mandatory. See, e.g., Bernstein Seawell & Kove v Bosarge, 813 F2d 726, 733 (5th Cir 1987). Thus, nothing in the FAA obligated the defendants to obtain an order from a United States District Court before invoking the dispute-resolution language in the provider agreements to initiate an arbitration proceeding.

manner in which the AHLA conducts the arbitration proceeding, those concerns can form the basis for a challenge to any arbitration award resulting from that proceeding. See MCR 3.602(J).

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: September 15, 2016



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge